IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 6532 of 2007(C)

PETITIONER:

SHYJU JACOB, AGED 34 YEARS,
S/O.CHELLAYYAN, CHAMBAYIL HOUSE, KADAVATTARAM,
NEYYATTINKARA.

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENTS:

---

1. UNION BANK OF INDIA,
CENTRAL OFFICE-239, VIDHYA BHAVA MARG,
NARIMAN POINT, MUMBAI- 400 021.

2. UNION BANK OF INDIA,
TRIVANDRUM MAIN BRANCH, UNION BANK OF INDIA,
M.G.ROAD, STATUE,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.6532 OF 2007

Dated this the 7th day of March, 2007

JUDGMENT

The first respondent Bank has taken action under the SARFAESI Act against the petitioner, a debtor. It is the petitioner's case that he has an insurance policy with the Export Credit Guarantee Corporation of India Ltd, which consists of a clause that any monies due to him under the said policy could be paid directly into the bank account and that he has suffered loss on account of Ext.P4, which is liable to be satisfied by ECGC. According to him, the original policy issued by ECGC is with the first respondent Bank and therefore, the Bank is not entitled to take securitisation proceedings for the dues. The petitioner has no case that the Bank is given the power of attorney to invoke the policy and move the ECGC for payment. Under such circumstances, the Bank cannot be tied down to the ECGC policy.

2. Having regard to the peculiar facts and circumstances of this case, if the petitioner remits an amount of Rs.1,00,000/- on

or before 29.3.2007 and invokes the ECGC policy with the necessary assistance of the Bank in that regard, the Bank will hold back further proceedings under the SARFAESI Act for a period of three months, to enable the petitioner to make an attempt to get the amount due to him under the ECGC policy. If the petitioner remits the amount as aforesaid, the Bank will do the needful to enable the petitioner to invoke the policy with the ECGC, since it is stated that the original policy is with the Bank. However, it is for the petitioner to take appropriate action to ensure that due credit of any monies due to the petitioner form the ECGC is brought to the Bank's account within a period of three months. If any of the conditions as aforesaid is not satisfied by the petitioner, the benefit of this judgment shall stand recalled automatically.

The writ petition is disposed of with the above directions.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.